

**UNITED STATE DISTRICT COURT  
FOR THE WESTERN DISTRICT OF NORTH CAROLINA  
CHARLOTTE DIVISION**

<b>JAMES BECKLEY,</b>	)	
	)	
<b>Plaintiff,</b>	)	<b>CASE NO. 3:21-cv-0072-RJC-DSC</b>
<b>v.</b>	)	
	)	<b>FIRST AMENDED COMPLAINT and</b>
<b>PRIORITY AUTO GROUP, INC.,</b>	)	<b>DEMAND FOR JURY TRIAL</b>
<b>PRIORITY AUTOMOTIVE</b>	)	
<b>HUNTERSVILLE, INC., DENNIS</b>	)	
<b>ELLMER and MATTHEW ELLMER</b>	)	
	)	
<b>Defendants.</b>	)	

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Plaintiff, James Beckley (“Beckley” or “Plaintiff”), by and through counsel, brings actions for: (1) violations of the North Carolina Wage and Hour Act (“NCWHA”), N.C. Gen. Stat. §§ 95-25.1 et. seq.; (2) breach of contract; (3) fraudulent inducement and misrepresentation; and (4) negligent misrepresentation against Defendants Priority Auto Group, Inc. (“Priority Auto Group”), Priority Automotive Huntersville, Inc. (“Priority Huntersville”), Dennis Ellmer, and Matthew Ellmer (“Matt Ellmer”) (together “Defendants”).

**THE PARTIES**

1. Beckley is an adult individual who is a resident of Mecklenburg County, North Carolina.
2. Priority Auto Group is a foreign corporation registered and in good standing in the State of Virginia.
3. Priority Huntersville is a foreign corporation registered and in good standing in the State of North Carolina.

4. Dennis Ellmer is an adult individual who is a resident of Virginia. Dennis Ellmer is the President of Priority Huntersville and Priority Auto Group.

5. Matt Ellmer is an adult individual who is a resident of Virginia. Matt Ellmer is the Chief Operating Officer of Priority Auto Group and the Chief Operating Officer of Priority Huntersville.

### **JURISDICTION AND VENUE**

#### **Personal Jurisdiction Over Priority Huntersville**

6. This Court has personal jurisdiction over Priority Huntersville because during the time period relevant to this Amended Complaint, it operated a new and used car dealership in Mecklenburg County, North Carolina, which marketed and sold vehicles to North Carolina residents. Priority Huntersville employed approximately 95-100 employees at its Huntersville, North Carolina location.

#### **Personal Jurisdiction Over Priority Auto Group**

7. This Court has personal jurisdiction over Priority Auto Group because during the time period relevant to this Amended Complaint, it did business in Mecklenburg County, North Carolina. At all relevant times, Priority Auto Group utilized and controlled what it referred to as its “Used Vehicle System” (“UVS”), which was applicable to all its dealerships in North Carolina, Virginia, and Maryland. Priority Auto Group states that the intent of the UVS is for “all inventory to be placed at the right store for the right money which will allow for the right profits and inventory turns.” For purposes of personal jurisdiction, under the UVS, on a regular and recurring basis, Priority Auto Group transported used vehicles from its dealerships in Virginia and Maryland to North Carolina to be sold in North Carolina at its Priority Huntersville location. Similarly, on

a regular and recurring basis, Priority Auto Group transported used vehicles to its dealerships in Virginia and Maryland from its Priority Huntersville location to be sold in Virginia and Maryland.

8. This Court also has personal jurisdiction over Priority Auto Group because it owns and operates an Internet website with the URL [www.priority.com](http://www.priority.com) by which it marketed new and used vehicles to residents of North Carolina. The Priority Auto Group website permitted North Carolina residents to search and shop any of Priority Auto Group's new Honda inventory from its four Honda dealerships in North Carolina and Virginia or any used vehicle in Priority Auto Group's inventory from its entire family of dealerships located in Virginia, Maryland, and North Carolina. When a North Carolina resident chose to purchase a vehicle from one of Priority Auto Group's Virginia or Maryland dealerships utilizing the Priority Auto Group website, Priority Auto Group transported the vehicle to Priority Huntersville for purchase and pickup.

9. This Court also has personal jurisdiction over Priority Auto Group because Priority Auto Group advertised and provided North Carolina residents its "Priorities for Life Best Deal Guarantee" through which a "Priority Automotive badge and license plate" is installed on a customer's car and Priority Auto Group provided free oil changes, an engine guarantee, parts & service, and free state inspections for its North Carolina customers, purportedly "for life." Priority Auto Group customers who purchased a vehicle from a Priority Auto Group dealership in Virginia or Maryland were permitted to utilize their "Priorities for Life Best Deal Guarantee" in North Carolina at Priority Huntersville, which occurred on a regular and recurring basis.

10. This Court also has personal jurisdiction over Priority Auto Group because it performs human resources, payroll, marketing, accounting, legal, and financial services for Priority Huntersville's North Carolina employees, including for Beckley. Priority Auto Group executives and other employees visit Priority Huntersville's North Carolina location on a regular

and recurring basis, including Defendants Matt Ellmer and Dennis Ellmer. Priority Auto Group, acted as joint or single employer with Priority Huntersville and employed approximately 95-100 employees at its Huntersville, North Carolina location.

11. Priority Auto Group Human Resources employees travelled to North Carolina on a regular and recurring basis to attend to the Human Resources needs of employees who worked at Priority Huntersville. Examples include investigating claims of discrimination, employee benefits issues, and employee theft issues.

12. During the relevant time period between when Beckley was hired as General Manager of Priority Huntersville and when Priority Huntersville was sold, Matt Ellmer travelled to North Carolina to conduct business in his role as an officer of Priority Auto Group and Priority Huntersville. Matt Ellmer conducted business in North Carolina on behalf of Priority Auto Group and/or Priority Huntersville on August 3, 2019, August 21, 2019, September 6, 2019, April 21, 2020, August 23, 2020, September 9, 2020, September 28, 2020, and October 8 and 9, 2020.

13. During the relevant time period between when Beckley was hired as General Manager of Priority Huntersville and when Priority Huntersville was sold, Dennis Ellmer conducted business in North Carolina on behalf of Priority Auto Group and/or Priority Huntersville on August 21, 2019, and September 6, 2019.

#### Personal Jurisdiction Over Matt Ellmer

14. This Court has personal jurisdiction over Defendant Matt Ellmer because through his personal acts and decisions he committed one or more torts against Beckley while Matt Ellmer was present in the state of North Carolina. Specifically, on or about July 2, 2019, Matt Ellmer met with Beckley at 131 Main Restaurant in Cornelius, North Carolina to recruit Beckley to become

General Manager of Priority Huntersville. During this meeting, Beckley and Matt Ellmer discussed Beckley's current employment with Keffer Automotive, including Keffer Automotive's promise of an equity stake in a dealership. Matt Ellmer either negligently or fraudulently told Beckley that a similar equity arrangement would be provided to Beckley if he accepted the General Manager position at Priority Huntersville.

15. This Court has personal jurisdiction over Matt Ellmer because on July 9, 2019, in furtherance of his tortious conduct, Ellmer texted Beckley at Beckley's home in North Carolina: "Thanks for the time today. Talked with my father just now and we are putting together an offer for you which I will send your way tomorrow. We are going to be aggressive ... you will not turn it down brother. We want you and we are coming after you. Tomorrow the proof will be in the pudding!" Matt Ellmer knew Beckley was in North Carolina when he sent this text message because Priority Auto Group purchased Beckley's airline ticket to transport him from Virginia to North Carolina on July 9, 2019 and Matt Ellmer drove Beckley to the airport for his flight home to Charlotte that day.

16. This Court has personal jurisdiction over Matt Ellmer because on July 10, 2019, in furtherance of his tortious conduct, Matt Ellmer emailed the offer of employment as General Manager of Priority Huntersville to Beckley at his home in North Carolina. The email states "Call me when you have read this please!! Lets [sic] do this thing!!!" and included an attachment entitled "JB Beckley Pay Plan."

17. This Court has personal jurisdiction over Matt Ellmer because on or about July 15 or 16, 2019, in reliance on Matt Ellmer's tortious conduct, and while in North Carolina, Beckley verbally notified Matt Ellmer that he accepted the position of General Manager of Priority Huntersville.

18. This Court has personal jurisdiction over Matt Ellmer because on July 18, 2020, in furtherance of his tortious activities, Matt Ellmer traveled to Charlotte to meet for dinner with Beckley and Beckley's wife. This meeting was held because Beckley and his wife still had concerns regarding Beckley leaving Keffer Mazda. During dinner, Matt Ellmer reassured Beckley's wife that Priority Auto Group was offering a long-term commitment to Beckley and Priority Huntersville, which included the promise of equity ownership.

19. This Court also has personal jurisdiction over Matt Ellmer because he traveled to North Carolina on September 9, 2020 to inform Beckley and other Priority Huntersville employees that Priority Huntersville had been sold.

#### Personal Jurisdiction Over Dennis Ellmer

20. This Court has personal jurisdiction over Defendant Dennis Ellmer because through his personal acts and decisions he committed one or more torts against Beckley while Dennis Ellmer was present in the state of North Carolina. Dennis Ellmer committed these torts against Beckley in Dennis Ellmer's individual capacity and in his capacity as an officer of Priority Auto Group and Priority Huntersville. Specifically, on or about July 2, 2019, Dennis Ellmer flew on his private jet from Virginia to North Carolina for the sole purpose of meeting with Beckley to discuss Beckley's potential employment as General Manager of Priority Huntersville. The meeting lasted approximately 2 hours. During this meeting, Beckley discussed his concern that Priority Huntersville was either "for sale" and that Dennis Ellmer's interest in hiring Beckley was to improve Priority Huntersville's performance numbers to increase its sales value. Dennis Ellmer either negligently or fraudulently represented to Beckley that Priority Huntersville was not for sale and that Priority Auto Group intended to remain in the Charlotte market and would not be sold. During this meeting, Beckley also discussed Beckley's current employment with Keffer Mazda,

including Keffer Automotive's promise of an equity stake in a dealership. Dennis Ellmer either negligently or fraudulently represented to Beckley that the employment opportunity with Priority Huntersville would include the promise of a long-term relationship. Beckley reasonably understood Dennis Ellmer's promise of "a long-term relationship" to mean an equity partnership because Matt Ellmer made this representation earlier that day and because Dennis Ellmer followed this promise with an invitation for Beckley to travel to Virginia to meet some of Priority Auto Groups's General Managers who held equity positions in their respective dealerships. Dennis Ellmer made sure to emphasize that many of these General Managers had been with Priority Auto Group for more than 20 years.

21. This Court has personal jurisdiction over Dennis Ellmer because on or about July 15 or 16, 2019, in reliance on Dennis Ellmer's tortious conduct, and while in North Carolina, Beckley verbally notified Matt Ellmer that he accepted the position of General Manager of Priority Huntersville.

22. This Court also has personal jurisdiction over Dennis Ellmer because Dennis Ellmer travelled to North Carolina on either August 3, 2019 or August 23, 2019 for the purpose of meeting with Priority Huntersville employee Lolli Cornelius ("Cornelius"), Service Director for Priority Huntersville. While present in North Carolina, in furtherance of his tortious conduct, Dennis Ellmer again either negligently or fraudulently represented to Beckley that his acceptance of employment with Priority Huntersville included future equity ownership.

23. This Court has personal jurisdiction over Dennis Ellmer because as an officer of Priority Huntersville he is listed as the "Dealer Principal" by American Honda Motor Company, Inc. and receives goods, documents of title, and other things of value on a regular and recurring basis from American Honda Motor Company, Inc. at Priority Huntersville's North Carolina

address. Items addressed to Dennis Ellmer include business correspondence, sales performance reports, sales awards, and compliance information from American Honda Motor Company, Inc.

24. This Court also has personal jurisdiction over Dennis Ellmer because he traveled to North Carolina on September 9, 2020 to inform Beckley and other Priority Huntersville employees that Priority Huntersville had been sold.

25. Venue is proper in this judicial district because Defendants have substantial business contacts in this district and because the unlawful acts alleged herein occurred in Mecklenburg County, North Carolina.

#### **COVERAGE ALLEGATIONS FOR NCWHA CLAIM**

26. Priority Huntersville and Priority Auto Group are Beckley's employer within the meaning of Section 95-25.2(5) of the NCWHA, N.C. Gen. Stat. §§ 95-25.2(5). Priority Huntersville and Priority Auto Group operated as an integrated enterprise and are a joint or single employer of Beckley within the meaning of the NCWHA.

27. Dennis Ellmer is an employer within the meaning of Section 95-25.2(5) of the NCWHA, N.C. Gen. Stat. §§ 95-25.2(5). Dennis Ellmer controlled the terms and conditions of Beckley's employment, including the compensation, employment contracts, and terms and conditions of employment that form the basis of this lawsuit.

28. Matt Ellmer is an employer within the meaning of Section 95-25.2(5) of the NCWHA, N.C. Gen. Stat. §§ 95-25.2(5). Matt Ellmer controlled the terms and conditions of Beckley's employment, including the compensation, employment contracts, and terms and conditions of employment that form the basis of this lawsuit.

29. Beckley is an employee of Defendants within the meaning of Section 95-25.2(4) of the NCWHA, N.C. Gen. Stat. §§ 95-25.2(4).

### **PLAINTIFF'S FACTUAL ALLEGATIONS**

30. Priority Huntersville and Priority Auto Group operated a Honda automobile dealership in Huntersville, North Carolina until approximately October 11, 2020, when it was sold to MileOne Autogroup ("MileOne").

31. Priority Auto Group operates and manages numerous automobile dealerships, including Priority Huntersville. Priority Auto Group, by and through Dennis Ellmer, negotiated and consummated the sale of Priority Huntersville.

32. Priority Auto Group and Priority Huntersville are a single, integrated enterprise under the NCWHA and North Carolina State law and operate as a joint employer or single employer. Priority Auto Group and Priority Huntersville are joint and severally liable for the NCWHA and North Carolina tort and contract violations alleged in this lawsuit.

33. Priority Auto Group and Priority Huntersville share common ownership.

34. Priority Auto Group and Priority Huntersville share centralized control and direction over the employees of Priority Huntersville.

35. The operations of Priority Auto Group and Priority Huntersville are interrelated.

36. Priority Auto Group centralizes the human resources, accounting, and payroll functions for all dealerships within the Priority Auto Group family, including Priority Huntersville.

37. Priority Auto Group controls and approves the terms and conditions for recruiting, onboarding, compensating, disciplining, and terminating employees who work at Priority Auto Group's family of dealerships in North Carolina, Virginia, and Maryland, including Priority Huntersville.

38. Priority Auto Group utilizes a single centralized time keeping system for all hourly employees who work at Priority Auto Group's family of dealerships in North Carolina, Virginia, and Maryland, including Priority Huntersville.

39. Priority Auto Group regularly interchanges its used car inventory amongst Priority Auto Group's family of dealerships in North Carolina, Virginia, and Maryland, including Priority Huntersville.

40. Priority Auto Group dictates and controls centralized policies and procedures that Priority Auto Group's family of dealerships in North Carolina, Virginia and Maryland must utilize to provide financing to new and used car customers, including Priority Huntersville customers.

41. Priority Auto Group dictates and controls centralized policies and procedures that Priority Auto Group's family of dealerships in North Carolina, Virginia and Maryland must utilize to market the dealership's services in digital, print and billboard formats, including Priority Huntersville.

42. Priority Auto Group purchases centralized insurance policies to provide liability coverage for Priority Auto Group's family of dealerships in North Carolina, Virginia, and Maryland, including Priority Huntersville.

43. All employees who are employed at a Priority Auto Group dealership, or by Priority Auto Group, are issued an email address ending in "@priorityauto.com," including employees who work at Priority Huntersville. Individual Priority Auto Group dealerships do not utilize email addresses that reflect the individual dealership. Instead, all communications to and from Priority Auto Group and its individual dealerships are sent under the single email URL "@priorityauto.com."

44. Beckley was the General Manager of Priority Huntersville from July 19, 2019 through the date it was sold to MileOne.

45. Beckley reported directly to Matt Ellmer. Matt Ellmer participated in recruiting Beckley to Priority Huntersville and negotiating the terms and conditions of Beckley's employment with Priority Huntersville.

46. Dennis Ellmer participated in recruiting Beckley to Priority Huntersville and negotiating the terms and conditions of Beckley's employment as General Manager of Priority Huntersville.

47. Beckley has worked in the automobile sales industry for approximately 24 years and is well known and admired in the automobile sales industry.

48. Beckley was employed as General Manager of Scott Clark Honda from September 2013 to November 2018.

49. In or about November 2018, Beckley accepted a position as General Manager of Keffer Mazda, located in Huntersville, North Carolina. One of the terms and conditions of Beckley's employment with Keffer Mazda included the promise of becoming an equity shareholder in one of Keffer Automotive's dealerships.

50. Beckley's performance at Keffer Mazda was exceptional. During the period November 2018 through June 2019, Keffer Mazda went from operating from a negative gross profit to a positive gross profit.

51. On or about June 14, 2019, Matthew Pennell ("Pennell"), Digital Performance & Marketing Director at Priority Auto Group, contacted Beckley via text message and began recruiting Beckley for the General Manager position at Priority Huntersville.

52. During the period June 14 through July 18, Beckley and Pennell communicated via text and telephone regarding Beckley's interest in the General Manager position.

53. During these discussions, Beckley informed Pennell that Beckley was promised an equity stake in a future Keffer Automotive dealership and that a similar agreement would be necessary to lure him away to Priority Huntersville.

54. Beckley also asked Pennell whether Priority Auto Group intended to hire Beckley for the purpose of fixing problems at the dealership and growing the business or to maximize the value of the dealership so Priority Auto Group could sell it.

55. Pennell assured Beckley that Priority Auto Group did not intend to sell Priority Huntersville. Pennell also informed Beckley that Dennis Ellmer "allows partners" and that Pennell believed that Dennis Ellmer would be "open" to the idea of Beckley obtaining an equity stake in Priority Huntersville.

56. On July 2, 2019, Beckley met with Matt Ellmer in Charlotte, NC to discuss hiring Beckley as General Manager of Priority Huntersville. During this meeting, Beckley and Matt Ellmer discussed Beckley's employment with Keffer Automotive, including Keffer Automotive's promise of an equity stake in a dealership. Matt Ellmer told Beckley that a similar equity arrangement could be provided to Beckley if he accepted the General Manager position at Priority Huntersville.

57. Beckley impressed Matt Ellmer during the July 2 meeting, which resulted in Dennis Ellmer flying from Virginia to Charlotte on his private plane to meet with Beckley that same day. Beckley then met with Dennis Ellmer and Matt Ellmer for approximately two hours at the Concord Airport in a private conference room. Dennis Ellmer discussed the employment opportunity as General Manager of Priority Huntersville, which included the promise of a long-term relationship.

Dennis Ellmer told Beckley that the offer of employment as General Manager of Priority Huntersville was more substantial than Beckley's current employment with Keffer Automotive, referring to the Keffer Automotive's promise of equity as one of "Keffer's ghost handshake partnerships."

58. During this same meeting, Beckley told Dennis Ellmer and Matt Ellmer that he was aware of rumors that Priority Huntersville was for sale and that he was "not interested in fixing a dealership to be sold." Dennis Ellmer assured Beckley that Priority Auto Group intended to remain in the Charlotte market and that Priority Huntersville would not be sold. To ease Beckley's concerns, Dennis Ellmer invited Beckley to travel to Virginia so Beckley could meet some of Priority Auto Group's General Managers who held equity positions in their respective dealerships. Dennis Ellmer made sure to emphasize that many of these General Managers had been with Priority Auto Group for more than 20 years.

59. On July 8, 2019, Beckley travelled to Virginia to meet with Robert Chen ("Chen"), Priority Auto Group's Managing Partner of Chesapeake Honda, and Nick Moonjohn ("Moonjohn"), Priority Auto Group's Managing Partner of Chesapeake Toyota. Beckley met individually with Chen and Moonjohn, with each providing a tour of his respective dealership. Chen and Moonjohn each described their equity arrangements with Priority Auto Group and discussed the benefits of being a Priority Auto Group equity partner.

60. After meeting with Chen and Moonjohn, Beckley attended Priority Auto Group's monthly General Manager dinner. The following morning, on July 9, Beckley attended Priority Auto Group's General Manager monthly status meeting. Following the status meeting, Beckley met with Dennis Ellmer and Matt Ellmer. Dennis Ellmer again assured Beckley that Priority Huntersville would not be sold. Dennis Ellmer disclosed to Beckley that if he wanted to sell

Priority Huntersville he would have done so already, as he had rejected an offer of \$15 million dollars from the AMSI group. Dennis Ellmer told Beckley: “Give me a 9-month commitment and I’ll go myself to the bank with you in Charlotte and co-sign the deal of partnership with Priority Honda Huntersville.” Beckley informed Dennis Ellmer and Matt Ellmer that he needed to discuss the opportunity with his wife and make the best decision for his family.

61. Later that day, on July 9, after Beckley had returned home to North Carolina, Matt Ellmer sent a text message to Beckley stating: “Thanks for the time today. Talked with my father just now and we are putting together an offer for you which I will send your way tomorrow. We are going to be aggressive . . . you will not be able to turn it down brother. We want you and we are coming after you. Tomorrow the proof will be in the pudding!”

62. As demonstrated by Matt Ellmer’s July 9, 2019 text message, Defendants did not make a job offer to Beckley while Beckley was present in Virginia. The purpose of the Virginia trip was for Beckley to meet with Priority Auto Group’s equity partners Chen and Moonjohn to learn the benefits of being a Priority Auto Group equity partner and to attend the Priority Auto Group’s monthly General Manager dinner.

63. Beckley was physically located in North Carolina on July 9, 2019 when Dennis Ellmer informed him that a job offer was forthcoming.

64. On July 10, 2019, Matt Ellmer emailed Beckley an offer of employment as General Manager of Priority Huntersville. Beckley was physically located in North Carolina when he received Matt Ellmer’s offer of employment. Attached to the email was a “Pay Plan” that guaranteed Beckley minimum compensation of \$40,000 per month during the first twelve months of his employment. Beckley accepted and signed the “Pay Plan” on July 19, 2019 in North Carolina. Upon signing this document Beckley provided the signed copy to Diane Ulmer, the

Comptroller for Priority Huntersville. Beckley was not provided a fully executed copy of the Pay Plan. A copy of the Pay Plan is attached as Exhibit 1.

65. On or about July 15, 2019, Beckley telephoned Matt Ellmer and verbally accepted the job offer. Beckley was physically located in North Carolina when he accepted the job offer.

66. Following the July 9 meeting, Beckley informed Matt Ellmer that Beckley's wife still had concerns about the Priority Huntersville General Manager position. On July 18, 2020, Matt Ellmer traveled to Charlotte to meet for dinner with Beckley and Beckley's wife. During dinner, in furtherance of his tortious conduct, Matt Ellmer reassured Beckley's wife that Priority Automotive was offering a long-term commitment to Beckley and Priority Huntersville.

67. Beckley accepted Priority Auto Group's offer of employment as General Manager of Priority Huntersville based on the representations and promises made by Dennis Ellmer and Matt Ellmer regarding their promise not to sell Priority Huntersville and Dennis Ellmer's promise of equity ownership in Priority Huntersville after 9 months. Beckley began his employment with Priority Auto Group on July 19, 2019.

68. Defendants Matt Ellmer and Dennis Ellmer were physically present in North Carolina when they committed the torts of fraudulent inducement and misrepresentation and negligent misrepresentation.

69. Upon information and belief, Matt Ellmer and Dennis Ellmer knew at all times that Priority Huntersville would be sold in the near future and that Beckley would not be offered equity ownership prior to the sale. Upon information and belief, Defendants began making preparations to sell Priority Huntersville prior to hiring Beckley, and continued with their plans to sell Priority Huntersville during negotiations with Beckley and during Beckley's employment as General Manager of Priority Huntersville. Matt Ellmer and Dennis Ellmer made negligent or fraudulent

representations and promises regarding Defendants' intent and plans to not sell Priority Huntersville and to provide Beckley with an equity stake in Priority Huntersville for the purpose of enticing Beckley to accept a General Manager position at an underperforming and failing property.

70. Matt Ellmer and Dennis Ellmer knew that Beckley would not accept an offer of employment as General Manager of Priority Huntersville without a promise of equity ownership or if Matt Ellmer and Dennis Ellmer intended to sell Priority Huntersville because Beckley was gainfully employed at Keffer Mazda as General Manager and would soon be receiving an equity position in that dealership. Despite having no intention to follow through with their promises, Matt Ellmer and Dennis Ellmer told Beckley what he needed to hear to secure Beckley's acceptance of their job offer. As Matt Ellmer stated in his text, "We are going to be aggressive . . . you will not be able to turn it down brother. We want you and we are coming after you."

71. After accepting employment as General Manager of Priority Huntersville, Beckley heard from several industry sources that Priority Auto Group was continuing to search for a buyer for Priority Huntersville. Beckley estimates that between August 2019 to April 2020 at least four different individuals told Beckley that Priority Huntersville was being sold. In April 2020, Beckley learned from a source he knew to be very reliable that Priority Auto Group had found a buyer for Priority Huntersville. On April 3, 2019, Beckley texted Matt Ellmer: "We're not being sold out are we? Priority Honda." Matt Ellmer replied: "No why would u [sic] say that." Beckley responded: "Rumors right?" Matt Ellmer responded: "Definitely rumors. Call you later my Brother."

72. By accepting employment, Beckley and Defendants entered into a binding oral contract to permit Beckley to become an equity partner in Priority Huntersville after 9 months of

employment. This contract was formed in the State of North Carolina and the services and promises contained therein were to be performed in the State of North Carolina.

73. Under Beckley's supervision and leadership, the interior and exterior of Priority Huntersville was immediately cleaned and organized. Prior to Beckley's arrival, Priority Huntersville had not been maintained, including but not limited to: damage to the vehicle inventory because of rat infestation, discarded cigarette butts on the ground near all of the entrances to the dealership, unused computer and office equipment piled in offices, stains on the carpets, and stacks of paper and trash piled throughout the interior of the dealership.

74. Upon accepting employment as General Manager of Priority Huntersville, Beckley installed a new sales and management team, and worked with existing Priority Huntersville staff to improve morale and sales skills.

75. Upon accepting employment as General Manager of Priority Huntersville, Beckley began a community outreach program that included: a back-to-school drive to donate school supplies and backpacks; an event held at Priority Huntersville to donate sports equipment to a community recreation organization, coordinating donations and volunteers from Priority Huntersville to assist the Urban Ministry soup kitchen; and a Toys for Tots program at Christmas.

76. During Beckley's first year as General Manager of Priority Huntersville, Dennis Ellmer and Matt Ellmer consistently praised and recognized Beckley's job performance and the results he achieved at Priority Huntersville. Beckley was responsible for increasing sales volume and market share for Priority Huntersville. During Beckley's tenure, Priority Huntersville set all-time records for sales.

77. In or about March 2020, Priority Auto Group began paying the full cost of Beckley's family health insurance premiums. Chen had previously informed Beckley that Priority

Auto Group limited this perk to Priority Auto Group General Managers who owned equity positions in their respective dealerships.

78. In or about June or July 2020, Beckley contacted Matt Ellmer to inquire about the status of Beckley's opportunity to purchase equity in Priority Huntersville. Matt Ellmer responded that Beckley needed to speak with his father, Dennis Ellmer. Beckley expected to speak with Dennis Ellmer at Priority Auto Group's monthly meeting in Virginia, but each month the meeting was cancelled due to the Covid-19 pandemic.

79. Priority Auto Group breached its contract with Beckley by failing to offer him an equity position in Priority Huntersville when Beckley reached 9 months of employment.

80. Pursuant to Beckley's compensation agreement, Priority Auto Group was contractually obligated to pay Beckley a minimum of \$40,000 per month during the first 12 months of his employment. (*See* Ex. 1.) In March 2020, Priority Auto Group arbitrarily reduced the amount of this guarantee to \$30,000 per month, in breach of Beckley's compensation contract. Priority Auto Group owes Beckley \$50,000 (February 2020 – July 2020) because of this breach.

81. Beckley's pay reduction was communicated to him verbally by Dennis Ellmer via telephone. Beckley was physically located in North Carolina when Dennis Ellmer breached his employment Pay Plan. Neither Dennis Ellmer, Matt Ellmer, Priority Auto Group, nor Priority Huntersville provided Beckley with written notice of a pay reduction as required by the NCWHA, § 95-25.13(3).

82. Defendants also unlawfully withheld or deducted approximately \$32,000 of earned wages from Beckley's paychecks during the course of his employment.

83. On or about September 9, 2020, Dennis Ellmer and Matt Ellmer arrived at Priority Huntersville and requested to meet in private with Beckley and Cornelius. Dennis Ellmer informed

Beckley that Priority Auto Group entered into an agreement to sell Priority Huntersville to MileOne and that the sale would close on October 11, 2020. Dennis Ellmer informed Beckley that MileOne had agreed to retain him and Cornelius in their respective positions and salaries “because of the success” of the dealership. Matt Ellmer then stated to Beckley: “I know this is not what you want to hear – I know you had that other opportunity.” Matt Ellmer also told Beckley that pursuant to the sales agreement with MileOne, Priority Auto Group could not employ Beckley or Cornelius for two years.

84. On or about October 23, 2020, MileOne terminated Beckley’s employment.

#### **Count I - Violation of NCWHA**

85. Beckley realleges and incorporates by reference all the paragraphs above in this Complaint as though fully set forth herein.

86. Count I arises from Defendants’ failure to timely pay promised and earned wages in violation of N.C. Gen. Stat. §§ 95-25.6 and 95-25.7.

87. Defendants violated N.C. Gen. Stat. §§ 95-25.6 and 95-25.7 by failing to pay Beckley all promised and earned wages on his regularly paydays.

88. Defendants violated N.C. Gen Stat. §§ 95-25.13 by failing to provide Beckley with written notice at least 24 hours prior to any change in his promised wages.

89. Defendants violated N.C. Gen Stat. §§ 95-25.8 by unlawfully withholding approximately \$32,000 of earned wages from Beckley’s paychecks over the course of his employment with Defendants.

90. Defendants’ violation was willful.

### **Count II – Breach of Contract**

91. Beckley realleges and incorporates by reference all the paragraphs above in this Complaint as though fully set forth herein.

92. Defendants breached their contract with Beckley to pay Beckley a minimum of \$40,000 per month during the first 12 months of his employment.

93. Defendants breached their contract with Beckley to permit Beckley to become an equity shareholder of Priority Huntersville after 9 months of employment.

94. Defendants' breach harmed Beckley.

### **Count III – Fraudulent Inducement and Misrepresentation**

95. Beckley realleges and incorporates by reference all the paragraphs above in this Complaint as though fully set forth herein.

96. Defendants intentionally induced Beckley to accept employment as General Manager of Priority Huntersville through knowingly false representations of fact and current intent regarding the sale of Priority Huntersville and the promise of equity partnership after 9 months of employment.

97. Defendants made false representations and/or concealed material facts regarding the sale of Priority Huntersville and the promise of equity partnership after 9 months of employment.

98. Defendants' false representations and/or concealed material facts were reasonably calculated and intended to deceive Beckley into leaving employment with Keffer Automotive and accepting employment with Defendants.

99. As a proximate cause of Defendants' false representations and/or concealed material facts, Defendants deceived Beckley and as a result Beckley incurred and suffered, and will continue to incur and suffer, substantial monetary losses, mental anguish, emotional distress, and other losses to which he is entitled to compensatory damages.

#### **Count IV – Negligent Misrepresentation**

100. Beckley realleges and incorporates by reference all the paragraphs above in this Complaint as though fully set forth herein.

101. Defendants had a duty to Beckley to act with reasonable care in providing information Defendants knew was material to Beckley's decision to accept employment.

102. Beckley justifiably relied, to his detriment, on Defendants' representations regarding the sale of Priority Huntersville, the offer of an equity partnership in Priority Huntersville after 9 months of employment, and the compensation that would be paid to Beckley.

103. As a proximate cause of Defendants' negligent misrepresentations, Beckley incurred and suffered, and will continue to incur and suffer, substantial monetary losses, mental anguish, emotional distress, and other losses to which he is entitled to compensatory damages.

#### **PRAYER FOR RELIEF**

WHEREFORE, Beckley demands the following relief:

- a) An Order finding Defendants liable under the NCWHA for unpaid wages and liquidated damages equal in amount to the unpaid and untimely compensation due to Beckley;

- b) An Order finding Defendants liable for breach of contract with regard to Defendants' failure to pay guaranteed compensation during the first 12 months of Beckley's employment and the promise of becoming an equity shareholder at 9 months of employment;
- c) An Order finding Defendants liable for fraudulent inducement and misrepresentation;
- d) An Order finding Defendants liable for negligent misrepresentation;
- e) An award of actual damages;
- f) An award of compensatory damages;
- g) An award of punitive damages;
- h) A declaration finding that Defendants willfully violated the NCWhA;
- i) An award of costs of this action; and
- j) An award of reasonable attorney's fees.

### **JURY TRIAL DEMAND**

Plaintiff demands a trial by jury for all issues of fact.

Respectfully submitted,

/s/ Philip J. Gibbons, Jr.  
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**CERTIFICATE OF SERVICE**

This is to certify that on March 15, 2021, the undersigned filed the foregoing using the Court's CM/ECF system which will send notification of such filing to the appropriate CM/ECF participants.

/s/ Philip J. Gibbons, Jr.  
*Attorney for Plaintiff*